PREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 503

THE HUDSON OIL CO. OF MO., INC., a corporation, **Petitioner,**

v.

W. W. McLEOD; MAE J. McLEOD; R. K. YEAGER; ALINE H. JACKSON YEAGER; CLIFFORD H. JACKSON, JR.; SUE K. JACKSON; LILLIAN JACKSON WILLARD, individually and as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; FIRST NATIONAL BANK OF MOBILE, as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; and JOHNSON REAL ESTATE, INC., a corporation, **Respondents.**

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INDEX

	PAGE
Opinion below	2
Jurisdiction	2
Questions presented	2
Statutory provisions involved	2
Statement of the case	3
Reasons for granting the writ	4
1. The Decision Below Conflicts With Applicable State Law as to Renewal of a Lease By Conduct Constituting Waiver of Notice	4
2. The Decision Below Raises Significant and Important Questions Concerning Real Estate Laws	8
Conclusion	8
Appendix	9
Stay of Mandate	9
Opinion of Court of Appeals	10
Judgment of Court of Appeals	17
Order Denying Rehearing of Court of Appeals	18
Opinion of District Court	20

CITATIONS

CASES:

Adam v. Concolini, 135 Conn. 321, 64 A.2d 44 (1949) 6

Autauga Cooperative Lease Association v. Ward, 250 Ala.229, 33 So. 2d 904 7

Coulter v. Capitol Finance Co., 266 N.C. 214, 146 S. E.2d 97 (1966) 6

Kearney v. Hare, 265 N.C. 570, 144 S.E.2d 636 (1965) 6

Lakeside Dairies v. Gregersen, 217 La 510, 46 So. 2d 752 (1950) 5

Lingle v. Wainwright, 215 La. 117, 39 So.2d 483 (1949) 6

McIntyre v. Coker, 274 Ala. 457, 150 So.2d 220 (1963) 5, 6

Noles v. Winn Oil Co., 30 Tenn. App. 227, 204 S.W.2d 539 (1947) 6

MISCELLANEOUS:

50 Am. Jur.2d "Landlord and Tenant" S. 1191, 78 (1970) 6

51 C.J.S. "Landlord and Tenant" S. 77, 226-227 (1968) 6

IN THE

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OCTOBER TERM, 19____

NO. _____

THE HUDSON OIL CO. OF MO., INC., a corporation,
Petitioner,

v.

W. W. McLEOD; MAE J. McLEOD; R. K. YEAGER; ALINE H. JACKSON YEAGER; CLIFFORD H. JACKSON, JR.; SUE K. JACKSON; LILLIAN JACKSON WILLARD, individually and as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; FIRST NATIONAL BANK OF MOBILE, as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; and JOHNSON REAL ESTATE, INC., a corporation,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner Hudson Oil Co. of Mo., Inc., respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 20, 1970.

OPINION BELOW

The opinion of the Court of Appeals, 424 F. 2d 1269 (1970) appears in the Appendix hereto. The opinion of the United States District Court for the Southern District of Alabama, Southern Division, not reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on April 20, 1970. A timely Petition for Rehearing was denied on June 23, 1970, and this Petition for Certiorari was filed within ninety days of that date. On July 10, 1970, the Court of Appeals granted a stay of mandate for thirty days from date of such order, which order appears in the Appendix hereto. This Court's jurisdiction is invoked under 28 U.S.C. S. 1254(1).

QUESTIONS PRESENTED

1. Does acceptance by a lessor of real estate of rentals from a lessee after the original rent term expires, and at increased rates provided in the lease for renewal terms, constitute waiver of notice requirements by the lessor?

2. Is a right of first refusal contained in a lease, assigned by an instrument of assignment, which does not expressly provide for its assignment?

STATUTORY PROVISIONS INVOLVED

No statute is directly involved in this appeal.

STATEMENT OF THE CASE

In 1955, Suraci leased a piece of property in Alabama from the individual respondents in the present case for a five-year term. The agreement contained a right of renewal for additional, five-year terms up to 1975 at increased rates of rent for each renewal term. The agreement also granted a right of first refusal to the lessee in the event the lessors wished to sell the property. In 1958, Suraci assigned the lease to petitioner Hudson Oil Company by written assignment which professed to assign the lease with renewal options, with all and singular the premises mentioned therein, but did not expressly mention the right of first refusal. From that time until now, petitioner remained in possession, made improvements and operated a service station. On June 3, 1960, the lessors, also respondents, entered into an option agreement with Motor Investment Corporation (the parent of respondent Johnson Real Estate, Inc.) whereby they agreed to sell the property to the optionee if the option was exercised within one year. The option was exercised and on June 15, 1964, title was conveyed. At this point petitioner claimed its right of first refusal and demanded that Johnson Real Estate (then owners of the property) convey the property to petitioner. This was refused and petitioner brought suit in the United States District Court for the Southern District of Alabama, Southern Division, based on diversity of the parties, for declaratory judgment and specific performance.

The District Court held for defendants on summary judgment on the following grounds: (1) The

right of first refusal was not assigned to petitioner by Suraci; (2) petitioner no longer held the right of first refusal anyway because it failed to renew the lease in time, and thus the original lease and its provisions expired in 1960 — approximately four years before petitioner attempted to exercise the right of first refusal. For petitioner to have made timely renewal of the lease, it was necessary to submit written notice of renewal before April 30, 1960 (six months before the first five-year term expired). Written notice dated April 25, 1960, was submitted on June 27, 1960, but the Court held that this notice was ineffective. However, petitioner continued in possession of the property and continued to pay rent on the property (at the increased renewal term rate as stipulated in the original lease) until the case went to court. In addition, the present owner accepted the rent payments and there was no evidence that the owner ever communicated to petitioner that the owner considered the lease not to be renewed.

On appeal, the Court of Appeals for the Fifth Circuit affirmed the District Court, holding that timely notice of renewal had not been given by petitioner, respondents' acceptance of increased rent did not constitute waiver of such notice, there was no renewal of the lease, and thus petitioner held no right of first refusal. The Court did not pass on the other question, i.e., whether the original lessee's assignment of the lease to petitioner also transferred the right of first refusal.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS

WITH APPLICABLE STATE LAW AS TO RENEWAL OF A LEASE BY CONDUCT CONSTITUTING WAIVER OF NOTICE.

The Court of Appeals holding that waiver must be manifested in some unequivocal manner and cannot be implied from acceptance of increased rent is directly contrary to the controlling case law of the State of Alabama wherein the action arose and the land involved is situated. The Supreme Court of Alabama in the case of **McIntyre v. Coker,** 274 Ala. 457, 150 So. 2d 229 (1963), held that acceptance of rent past the expiration of the original lease where there was no increase in rates was indication of intent to waive the requirement for timely notice of renewal.

It stated:

> "A lessee who enters into possession of the demised premises under a lease for a fixed term with the privilege of renewing it by giving written notice to the lessor, and continues in possession after the fixed term has expired, paying the rent therefor as it becomes due, thereby elects to exercise the option for a renewal although no written notice was given. In such a case the requirement of a written notice may be waived by the parties and a waiver may be implied when the lessee remains in possession and pays the rent to the lessor." (Cites cases)

In some jurisdictions, continued possession by the lessee and acceptance of rent at the same rate by the lessor is enough to permit a ruling of waiver of notice. **Lakeside Dairies v. Gregersen,** 217 La. 510,

46 So. 2d 752 (1950); **Adams v. Consolini,** 135 Conn. 321, 64 A.2d 44 (1949); **Noles v. Winn Oil Co.,** 30 Tenn. App. 227, 204 S.W.2d 539 (1947). This is the rule in Alabama, as the **McIntyre v. Coker** case, supra, reflects.

In every other jurisdiction in which applicable cases were found, where a lessor accepted rent from a lessee after the original rent term had expired and at increased rates given in the lease agreement for renewal terms, the courts held that this was adequate evidence to indicate waiver of notice requirements by the lessor. **Coulter v. Capitol Finance Co.,** 266 N.C. 214, 146 S.E.2d 97 (1966); **Lingle v. Wainwright,** 215 La. 117, 39 So2d 483 (1949); **see also** 50 **Am.Jur.**2d "Landlord and Tenant" S 1191, 78 (1970); 51 **C.J.S.** "Landlord and Tenant" S 77, 226-227 (1968). Some of these jurisdictions distinguish between situations where rentals have been accepted at the same rate or at an increased rate. The North Carolina Court in the case of **Coulter v. Capital Finance Co.,** supra, had ruled the year before in **Kearney v. Hare,** 265 N.C. 570, 144 S.E.2d 636 (1965), that mere acceptance of rent past the date of expiration was not enough to allow waiver. But in the **Coulter** case, supra, the additional fact that the rent was at an increased rate furnished sufficient grounds for the Court to allow waiver.

In short, not only does the decision of the Court of Appeals conflict with the express law in Alabama, but indeed conflicts with all other jurisdictions in which applicable cases of acceptance of rental at increased rates can be found.

The second question presented, concerning whether the right of first refusal passed to petitioner absent an express mention of it in the instrument of assignment, was not decided by the Court of Appeals; however, the District Court expressly found that this right of first refusal did not so pass to petitioner. In this instance the District Court was in error in that the general rule in the United States and the rule in Alabama is as set forth in 45 ALR2d, pages 1040-1041:

> "It is generally agreed that, absent a **manifestly contrary intention of the parties,** upon a valid assignment of a lease containing an option to purchase, the option, as a covenant running with the land, passes to the assignee, and may be enforced by him in the same manner and to the same extent as by the original lessee." (Emphasis supplied)

It cites **Autauga Cooperative Lease Association v. Ward,** 250 Ala. 229, 33 So.2d 904, as the Alabama authority therefor.

This aspect of the District Court's decision therefore also conflicts with applicable law holding assignment of "a certain lease," without exception, passes all rights under it.

Your petitioner would intend to urge and argue this latter point concerning the error of the District Court in the passing of the right of first refusal further, should certiorari be granted.

2. THE DECISION BELOW RAISES SIGNIFICANT AND IMPORTANT QUESTIONS CONCERNING REAL ESTATE LEASES.

The device of incorporating an option or right of first refusal with a lease and renewal option on real estate has become almost as common as the warranty deed. Many cases have arisen in Alabama and elsewhere on such leases. The holding of the Court of Appeals that "waiver cannot be implied from the facts here, including acceptance of increased rent," since directly in conflict with the applicable Alabama law, and indeed the rule in all other jurisdictions we can find, constitutes a complete departure from an otherwise accepted State rule.

Such a complete and clearly erroneous departure from the established applicable State law cannot help but lead to confusion and uncertainty concerning this significant area of real estate law and offers a singularly appropriate case for the assertion of the Court's review.

The clear error of the decision below in applying State law and the conflicts with State law therein raised justify the grant of certiorari to review the judgment below.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Fifth Circuit.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

NO. 27304

THE HUDSON OIL CO. OF MO., INC.,
Appellant,

versus

W. W. McLEOD, MAE J. McLEOD, ET AL.
Appellee.

ON CONSIDERATION OF THE APPLICATION of the appellant in the above numbered and entitled cause for a stay of the mandate of this Court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this Court in said cause be and the same is stayed for a period of 30 days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within 30 days from the date of this order there shall be filed with the clerk of this Court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of 30 days from the date of this order, unless the above mentioned certificate shall be filed with the clerk of this Court within that time.

DONE AT NEW ORLEANS, LA., THIS 10th day of July, 1970.

/s/ Robert A. Ainsworth, Jr.
UNITED STATES CIRCUIT JUDGE

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
For The Fifth Circuit

NO. 27304

THE HUDSON OIL COMPANY OF MOBILE, INC.,
Plaintiff-Appellant,

versus

W. W. McLEOD, MAE J. McLEOD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

(April 20, 1970)

Before BELL, AINSWORTH and CARSWELL, Circuit Judges.

AINSWORTH, Circuit Judge: In this diversity case plaintiff seeks a declaratory judgment and specific performance in connection with certain real property situated in the City of Mobile, Alabama. The District Court denied relief and we affirm.

In October 1955, appellees McLeod and wife entered into a written contract of lease of the property with one Matthew Suraci for rental of the property for a term of five years commencing November 1, 1955, with right of renewal for additional five-year terms up on October 31, 1975.

The lease agreement contained a provision sometimes referred to as "the right of first refusal," which reads as follows:

> 5. The lessor further agrees that should he desire and undertake to sell the leased premises or any portion thereof, he will first give the lessee the right and privilege of refusing to purchase same at the same price as that contained in any bona fide offer that the lessor is willing to accept."

In September 1957, McLeod and wife executed a deed to the effect that legal title to the real property involved was jointly in themselves and certain other individuals. On April 1, 1958, lessee Suraci executed a written assignment of the lease to Hudson Oil Company, appellant herein. The assignment concluded with the clause "To have and to hold the same unto the Hudson Oil Company and its assigns from the 11th day of March, 1958 for and during all the rest and remainder yet to come of, and in the term of, all years mentioned in the said lease, **subject to the rents, covenants and conditions contained in said lease.**" (Emphasis supplied.) The assignment did not expressly state that the right of first refusal contained in the original lease was also being assigned. The parties are in disagreement as to whether the assignment should be construed to transfer not only the lease but also the right of first refusal contained in the original lease agreement.

The first five-year term of the lease expired on October 31, 1960, and in order to renew the term for

the next five-year period commencing November 1, 1960, it was necessary for lessee to give six months' written notice of renewal prior to the expiration of the primary term. Written notice was necessary, therefore, on or before April 30, 1960. Appellant Hudson Oil Company contends that it gave "timely notice" of intenton to renew the lease to lessors, but when its counsel inquired whether such a notice had been received, being advised by the McLeods that it had not, caused a registered letter to be sent to lessors dated June 27, 1960 enclosing an unsigned copy of a purported notice of renewal dated April 25, 1960. If the April 25, 1960 notice had been received by April 30, 1960, it would have been timely. Hudson Oil Company continued in possession of the property and to pay rent at the increased amount provided for the renewal period.

On June 3, 1960, the owners of the property, appellees herein, entered into an option agreement with Motor Investment Corporation (the parent of appellee Johnson Real Estate, Inc.) to sell a certain large parcel of property in Mobile, Alabama, for $262,500 and in the same instrument also granted an option of buying the property involved in this case (which is adjacent to the large parcel) for the sum of $40,000. The option for the smaller parcel could be exercised in writing at any time within one year following the date of conveyance of the larger parcel to purchaser if the option to buy it was actually exercised. Thereafter, the option to purchase the larger parcel was exercised and deed conveying title to the purchaser was executed on December 4, 1961.

The option to purchase the smaller parcel—the property involved in this case—was thereafter exercised and the owners finally conveyed title thereto on June 15, 1964 to appellee Johnson Real Estate, Inc. Claiming that it had the right of first refusal under the original McLeod-Suraci lease, which it avers was assigned to it, Hudson Oil Company demanded that Johnson Real Estate, Inc. convey the property to it for the same consideration. On Johnson's refusal this suit by Hudson against Johnson and the former owners of the property, McLeod and wife and others, followed. Both plaintiff and defendants moved for summary judgment and the Court granted summary judgment in favor of defendants. In granting defendants' motion the District Court held that assignment of the lease by Suraci to Hudson Oil Company did not also transfer the right of first refusal; also that Hudson Oil Company failed to give timely notice to defendants of intention to exercise the option to renew the lease for an additional term of five years; that such failure terminated the lease agreement, and that at the end of the primary term Hudson was a tenant at will or a tenant on a month-to-month basis.

We do not find it necessary to reach the difficult question as to whether Suraci's assignment to Hudson Oil Company of the lease involving the property in this case, also conveyed the right of first refusal contained in the lease. We hold, in agreement with the District Judge that appellant Hudson Oil did not timely renew the lease. In its complaint Hudson alleges timely renewal and in the affidavit supporting its motion for summary judgment again states the conclusion that timely renewal was made. But the record

is devoid of proof to this effect and there is no statement, affidavit or proof of any kind that appellee owners of the property were notified by Hudson of intention to renew the lease. The first that McLeod and wife knew about the desire to renew the lease was contained in the registered letter of June 27, 1960 which enclosed a copy of the so-called April 26, 1960 written renewal. Nor does the record justify a finding of waiver of notice within the Alabama rule of **McIntyre v. Coker,** 274 Ala. 457, 150 So. 2d 220 (1963). Waiver cannot be implied from the facts here, including acceptance of increased rent. It must be manifested in some unequivocal manner not found here. **Liverpool & London & Globe Ins. Co v. Dickinson,** 242 Ala. 107, 5 So. 2d 90 (1941). We hold, therefore, that the District Judge's ruling was correct, that there was no timely renewal, and that the lease of the property expired by its terms on October 31, 1960. The right of first renewal, if it existed by assignment from Suraci—and we do not decide this—would have subsisted until the expiration of the primary term of the lease. Thus appellant contends that the granting of the option by appellee owners on June 3, 1960 to Motor Investment Corporation was a breach of the agreement to grant the right of first refusal to lessee and, therefore, that it was unnecessary for the Court to decide whether the lease was renewed since the alleged breach of contract occurred during the primary term of the lease.

We are unable to agree with this contention because the June 3, 1960 option which granted the right to purchase the larger parcel of ground (not involved in this case) also granted an option within one year

to purchase the property involved here provided, however, that the first option was exercised and title actually taken to the larger parcel. It cannot be said, therefore, that before October 31, 1960, the date of the expiration of the primary term of the lease, appellee owners had undertaken to sell the leased premises. All they had done was grant an option on a larger parcel conditional upon another option to purchase the property involved here, and it was not until December 4, 1961, that the option to purchase the larger parcel was exercised and title actually conveyed. Occurrence of this event triggered the right of optionee to purchase the property involved here within one year, and that option was ultimately exercised and title transferred on June 16, 1964. There was, therefore, no breach of the right of first refusal if in fact such a right existed in Hudson Oil, appellant herein. As appellant's counsel states it (in a lower court brief brought to our attention by opposing counsel):

> " . . . the option of June, 1960, is not by its terms binding upon anybody as far as the parties thereto were concerned. An examination of its terms shows that, first of all, the parties agreed, while giving an option on other lands, to later give an option on the land involved in this law suit. Secondly, the document expressly says that if any title defect occurred, each party is excused from performance. It should be quite apparent that the Hudson situation is such a title defect as would excuse performance."

Since the facts disclose, therefore, that the lease

was not timely renewed, expired by its terms on October 31, 1960, and no firm agreement to sell the property was made until long after the expiration of the date of the primary term of the lease, the District Court's holding in this regard was correct.

It is unnecessary that we consider any of the other issues raised by the parties since our decision here fully determines the case.

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
For The Fifth Circuit

October Term, 1969

NO. 27304

D. C. Docket No. CA 3963-65

THE HUDSON OIL COMPANY OF MOBILE, INC.,
Plaintiff-Appellant,

versus

W. W. McLEOD, MAE J. McLEOD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Alabama

Before BELL, AINSWORTH and CARSWELL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that plaintiff-appellant pay to defendants-appellees, the costs on appeal to be taxed by the Clerk of this Court.

April 20, 1970

Issued As Mandate:

APPENDIX D

IN THE

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

NO. 27304

THE HUDSON OIL COMPANY OF MOBILE, INC.,
Plaintiff-Appellant,

versus

W. W. McLEOD, MAE J. McLEOD, ET AL.,
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Alabama

(June 23, 1970)

ON PETITION FOR REHEARING

Before BELL and AINSWORTH
Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

* Judge Carswell was a member of the panel originally deciding this case but did not participate in this decision.

APPENDIX E

IN THE

UNITED STATES DISTRICT COURT

For The Southern District Of Alabama

Southern Division

CIVIL ACTION NO. 3953-65

THE HUDSON OIL COMPANY OF MOBILE, INC., a corporation,

Plaintiff,

v.

W. W. McLEOD MAE J. McLEOD, R. K. YEAGER, ALINE H. JACKSON YEAGER, CLIFFORD H. JACKSON, JR., SUE K. JACKSON, LILLIAN JACKSON WILLARD, individually an as co-executor and co-trustee of the will of E. E. WILLARD, deceased, FIRST NATIONAL BANK OF MOBILE, as co-executor and co-trustee of the will of E. E. WILLARD, deceased, and JOHNSON REAL ESTATE, INC., a corporation,

Defendants.

ORDER

This matter comes before the Court on the motion of the plaintiff herein, Hudson Oil Company of

Mobile, Inc., requesting the Court to grant Summary Judgment in its favor. The motion was filed on May 14, 1968, and on July 12, 1968, this matter was specially set for oral hearing. After argument of counsel, the motion was taken under submission by the court. By supplemental briefs, the party defendants join the plaintiff in requesting that this litigation be disposed of by summary judgment.

This litigation revolves upon the construction of a lease entered into by the defendants McLeod, Willard and Jackson with a third person who is not a party to this litigation. The third person assigned the lease to Hudson Oil Company, who now asserts the full rights of the original lessee. The Court has carefully considered the pleadings and exhibits thereto, the answers to the request for admissions and the applicable law, and enters its findings herein.

The Court finds that the plaintiff did not receive the right of first refusal when the assignment of the lease was executed by the original lessee. The Court finds that the original lessee retained such right but the Court makes no finding as to the enforceability of the right, inasmuch as the original lessee is not a party to this suit.

The Court finds that the plaintiff failed to give timely notice to the named defendants of the plaintiff's intention to exercise the option to renew the lease for a term equal to the primary term. Such failure by the plaintiff terminated the lease agreement and at the end of the primary term rendered the

plaintiff a tenant at will or a tenant on a month to month basis.

The Court further finds that the plaintiff's claim against the estate of E. E. Willard is forever barred by the Alabama Statute of Non-Claim, Title 61, Section 211, Alabama Code.

The Court directs the Clerk of the Court, thirty days hereinafter provided no appeal is taken from this order, to release all checks and monies held pending the disposition of this litigation to defendant Johnson Real Estate, Inc., as the proper party to receive the accrued rent. The plaintiff is hereby directed to substitute any checks now on deposit which are not payable to Johnson Real Estate, Inc. for checks of like amount payable to Johnson Real Estate, Inc.

It is further ORDERED, ADJUDGED and DECREED by the Court that plaintiff's motion for summary judgment is hereby DENIED and summary judgment for the party defendants should be and is hereby GRANTED and this cause is hereby DISMISSED.

Costs taxed to the plaintiff.

DONE in Mobile, Alabama, this the 30th day of September, 1968.

Daniel H. Thomas
UNITED STATES DISTRICT JUDGE

IN THE

Supreme Court of the United States

OCTOBER TERM, 19__

NO. _____

THE HUDSON OIL CO. OF MO., INC., a corporation, **Petitioner,**

v.

W. W. McLEOD; MAE J. McLEOD; R. K. YEAGER; ALINE H. JACKSON YEAGER; CLIFFORD H. JACKSON, JR.; SUE K. JACKSON; LILLIAN JACKSON WILLARD, individually and as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; FIRST NATIONAL BANK OF MOBILE, as co-executor and co-trustee of the will of E. E. WILLARD, Deceased; and JOHNSON REAL ESTATE, INC., a corporation, **Respondents.**

CERTIFICATE OF SERVICE

I, Michael J. Salmon, counsel for petitioner herein and a member of the bar of the Supreme Court of the United States, do hereby certify that on the 4th day of August, 1970, I served three copies of the foregoing Petition for a Writ of Certiorari to the United States Fifth Circuit Court of Appeals on Mr. Alvin McConnell, one of the counsel for Johnson Real Estate, Inc., one of the respondents in the above-styled case, by mailing the same to him, postage prepaid, at 802 Van Antwerp Building, Mobile, Alabama.

I further certify that on the 4th day of August, 1970, I served three copies of the foregoing

Petition for a Writ of Certiorari to the United States Fifth Circuit Court of Appeals on Mr. Jere Austill, Jr., counsel for the respondents in this cause other than Johnson Real Estate, Inc., by mailing the same to him, postage prepaid, at 1005 Van Antwerp Building, Mobile, Alabama.

I further certify that on the 4th day of August, 1970, I served three copies of the foregoing Petition for a Writ of Certiorari to the United States Fifth Circuit Court of Appeals on Mr. Frederic D. Dassori, one of the counsel for Johnson Real Estate, Inc., one of the respondents in the above-styled cause, by mailing the same to him, postage prepaid, at 3000 Connecticut Avenue, Washington, D.C. 20008.

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